

Feb. 16. 2006 2:53PM

No. 5461. P. 1

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### COMMENTS:

Please file the attached Response re: Application No. 09/314,052; filed May 18, 1999, for "Method and Apparatus for Conditioning Gas for Medical Procedures" (Attorney Docket No. 1-15372).

**L2073-15372001**

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No. 5461 P. 2

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:  
DOUGLAS E. OTT, et al.

Serial No. 09/314,052

Filed: May 18, 1999

For: METHOD AND APPARATUS  
FOR CONDITIONING GAS FOR  
MEDICAL PROCEDURES

)  
) Group Art Unit 3763

)  
) Examiner: Mendez, M.

)  
) Attorney Docket 1-15372

)  
) Paper No.

February 16, 2006

Mail Stop Amendment  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22213-1450

RESPONSE TO ELECTION/RESTRICTION REQUIREMENT

Honorable Sir:

This paper is in response to the restriction requirement dated February 9, 2006. In the restriction requirement, the Examiner stated that there were claims drawn to the following patentably distinct species of the claimed invention. They were listed as:

Figure 1 (gas apparatus with no temperature sensor); and

Figures 4 and 5 (gas apparatus with temperature sensor), respectively.

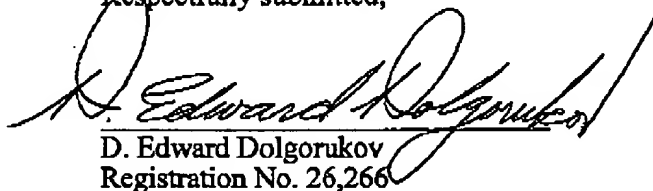
The Examiner stated that Applicant was required to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. The Examiner stated that no claim is currently considered generic.

Applicant traverses the requirement for at least the following reasons. First, these claims already exist in an issued patent (US Patent No. 6,976,489), therefore the United States Patent and Trademark Office has already found the claims to be generic.

Second, the presence of a temperature sensor in the species of Figs. 4 and 5, are just a subset, or a special case, of the species of Fig. 1. Claims which do not recite a temperature sensor also don't exclude the use of a temperature sensor. Therefore, Applicant also traverses because there would be significant overlap for the search for the inventions of each species, and there would be no hardship for each species to be searched and examined simultaneously.

Applicant provisionally elects the species of Figs. 4 and 5 (claims 83-86) with traverse. Applicant reserves the right to file a divisional application on the species of Fig.1 (claim 82).

Respectfully submitted,



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